

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

DEC - 5 2005

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

Roger W. McClarin,

Plaintiff,

v.

Pete White,

And

Fred Hammell,

And

Joe Ebel,

And

Bill Brown,

And

Kenneth Truemper

And

Chico Humes

And

Ralph Bruns

And

Universal Printing Company,

And

Graphics Communication Union
Local 505,

Defendants.

4 05CV0 2278 SNL

Cause No. _____

Removed from the Circuit Court of
the City of St. Louis, State of Missouri
Cause No. 052-11429

NOTICE OF REMOVAL

COME NOW Defendants Universal Printing Company (“Universal Printing”) and Joe Ebel, pursuant to 28 U.S.C. §§ 1331, 1441(b), 1446, and remove this action from the Circuit Court of the City of St. Louis, State of Missouri to the United States District Court, Eastern District of Missouri, Eastern Division. Removal is proper on the following grounds:

1. Plaintiff, who is currently incarcerated at the Missouri Eastern Correctional Center, filed this civil action pro se (*See, Motion to Proceed In Forma Pauperis*) in the Circuit Court of the City of St. Louis, State of Missouri naming Universal Printing and Joe Ebel as Defendants.

2. In his Petition, Plaintiff alleges that over seven years ago (from 1991 – 1998), Universal Printing employed him (*Petition*, ¶3) and, during his employment, he was a member of the Graphic Communications International Union (“GCIU”) Local 505 (*Petition*, ¶4). Plaintiff alleges that Universal Printing retaliated against him for filing various grievances under the collective bargaining agreement (*Petition*, ¶¶ 10, 11, 13, 15, 17, 25, 29, 39, 41) and that the GCIU failed to investigate, process and/or pursue grievances on his behalf. (*Petition*, ¶¶ 17, 21, 31, 33, 37, 40, 43).

3. Because Plaintiff’s cause of action is essentially a hybrid action for breach of a collective bargaining agreement against Universal Printing and breach of duty if fair representation against the GCIU it is one arising under §301 of the Labor Management Relations Act of 1947 (“LMRA”), 61 Stat. 156, 29 U.S.C. § 185(a). Therefore, this Court has original jurisdiction under 28 U.S.C. § 1331 because the Complaint is founded on a claim or right arising under the laws of the United States and, as such, the action is removable to this Court under 28 U.S.C. § 1441(b).

4. This Notice of Removal is timely filed. The date upon which the Defendants are required to answer or otherwise respond to Plaintiff's Complaint under the laws of the State of Missouri has not lapsed. Summons was issued on November 2, 2005 and Defendants are required to appear and answer the Petition within 30 days after service of summons.

5. A copy of the complete file from state court including summons and return of summons is attached hereto as **Exhibit A**.

6. Notice of this removal is being provided to Plaintiff and to the Clerk of the Court of the Circuit Court of the City of St. Louis, State of Missouri.


7. As of the filing of this Notice of Removal, only Defendants Universal Printing and Joe Ebel have been properly served.¹

WHEREFORE, Defendants Universal printing and Joe Ebel give notice for removal of this cause pursuant to the laws of the United States in such cases and pray this Honorable Court to accept jurisdiction of said action.

¹ The Sheriff's Department delivered copies of the Petition for Defendants Joe Ebel, Bill Brown, Pete White, Fred Hammell and Universal Printing at Universal Printing's business address. However, service on all Defendants except Universal Printing and Joe Ebel was improper as it did not comply with Missouri Civil Rule 54 because it was not served personally on these defendants and said Defendants are no longer employees of Universal Printing. In fact, Defendant Pete White is deceased.

Respectfully submitted,

BOBROFF, HESSE,
LINDMARK & MARTONE, P.C.

By: 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice Of Removal was served via U.S. Mail, postage pre-paid on this 5th day of December, 2005 to: Roger W. McClarin, Missouri Eastern Correctional Center, 18701 Old Highway 66, Pacific, MO 63069.

